IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 373 of 2007
Date of decision 26 .11 .2007

The Commissioner of Income Tax, Karnal .. Appellant
Versus
Shri Sharwan Kumar son of Shri Daya Ram .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. Yogesh Putney, Advocate for the appellant

M.M.Kumar, J.

The revenue has filed the instant appeal under Section 260A of the Income Tax Act,1961 against the order dated 29.12.2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'G', New Delhi in ITA No.1981 /Del/2005 in respect of assessment year 2002-03. It has been alleged that the following substantial question of law would arise for consideration of this Court:

> "1. Whether on the facts and in the circumstances of the case, the ld. ITAT was right in law in upholding the decision of the CIT(A), deleting the penalty of Rs.2,50,000/- levied under Section 271D for contravention of the provisions of Section 269 SS, as both the creditor as well as debtor are having mainly income from business;
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> 2. Whether on the facts and in the circumstances of the case, the findings recorded by the Ld. ITAT are perverse in deleting the penalty of Rs.2,50,000/- levied u/s 271 D on account of violation of provisions of Section 269 SS of the Income Tax Act, 1961?"

Facts in brief are that during the course of assessment proceedings,

the Assessing Officer noticed that the assessee had accepted cash loan of Rs. 2,50,000/- and Rs.3,00,000/- from M/s Suresh and Brothers and M/s Kundan Lal Balak Ram in violation of the provisions of Section 269 SS of the Income Tax Act, 1961. The Assessing Officer accordingly referred the matter to the Addl. Commissioner of Income Tax who imposed penalty of Rs.2,50,000/- upon the assessee u/s 271 D of the Act for contravention of the provisions of Section 269 SS of the Act. In an appeal filed by the assessee, the Commissioner of Income Tax (Appeals) deleted the penalty with respect to transaction of Rs. 2,50,000/- by recording a finding that the assessee had received advance from M/s Suresh and Brothers which was squared up out of sale of agricultural produce during the relevant year and the amount taken by the assessee in cash was not in the nature of loan but was in the normal course of selling its agricultural produce in advance. However, the penalty with respect to loan of Rs. 3,00,000/- was upheld. The appeal filed by the Revenue before the Income Tax Appellate Tribunal was dismissed.

Having heard the learned counsel for the revenue and perusing the records, we are of the considered view that pure findings of fact have been recorded by the authorities below and no interference of this Court in the pure findings of fact would be warranted. The genuineness of the transaction is not in dispute. On ap[preciation of facts the authorities below have opined that levy of penalty in the facts and circumstances of the case was not warranted. This Court would not like to substitute its own opinion in the matter when a possible view has been taken by the Tribunal. No substantial question of law within the meaning of Section 260A(1) of the Act would arise for determination of this Court. There is thus no merit in the

appeal and the same is accordingly dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

26.11.2007
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